IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1101 of 1993

Amsaveni .. Appellant

-Vs-

1. T.Umapathy
2. T.Dilli
3. T.Gunalan
4. Amsaveni
5. Saraswathy
6. Sathiyavathy .. Respondents

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 12.4.1993 made in A.S.No.7 of 1992 on the file of the Subordinate Judge, Vellore, confirming the judgment and decree dated 22.4.1992 made in O.S.No.873 of 1984 on the file of the Principal District Munsif, Vellore.

!For Appellant : Mr.J.Parekkumar
for Mr.P.Mani

^For Respondents : Mr.S.Parthasarathy
for M/s.Sarvabhauman Associates

:JUDGMENT

This second appeal is directed against the judgment of the learned Subordinate Judge, Vellore, made in A.S.No.7 of 1992 affirming the judgment of the trial Court made by the District Munsif in a suit for declaration and permanent injunction.

2. The following facts are noticed in the pleadings of the parties:
The plaintiff is the daughter of the first defendant through his wife Thulasiammal. On 24.8.49, the first defendant executed a settlement deed in favour of Thulasiammal, settling the suit properties in her favour absolutely for consideration of her giving consent to the second marriage, in advancement of her interest and for the benefit of her daughter, the plaintiff, who was minor that time. While executing the document, the first defendant stealthily introduced a clause, without the knowledge and consent of Thulasiammal, restraining her right to a life and vesting the remainder upon himself or in the alternative upon the male sons to be thereafter born to him. This clause was vitiated not only by fraud, but also by the provisions of law. The said

Thulasiammal had pre-existing right of maintenance in view of his proposal to marry second time against law. She was put in absolute possession of the property, and hence, Sec.14(1) of the Act alone applies, and Sub Section (2) will not operate. The plaintiff had succeeded to the absolute title to the properties and was in possession and enjoyment of the same. She and her mother have perfected title by such adverse possession. Neither the first defendant nor his illegitimate sons can claim interest in them. At the time of execution of the settlement deed, the defendants 2 to 7 were not in existence. They were illegitimate children of the first defendant. While so, the defendants interfered with the plaintiff's possession, and hence, this suit.

3. The suit was resisted by the defendants stating that the settlement deed was made in favour of the first defendant's wife for a limited purpose; that it prescribed a restricted estate in the property in favour of the deceased Thulasiammal; that before the execution of the document, she had no pre-existing interest in the properties, and hence, Sec.14(2) of the Hindu Succession Act will only apply; that such a restricted estate will not be enlarged into an absolute estate under Sec.14(1); that after her death, the first defendant as the holder of the vested remainder, became entitled to the suit properties; that the plaintiff has no right, title or interest in the properties; that the defendants were in possession and enjoyment of the properties; that the plaintiff was never in possession; that neither the plaintiff nor her mother perfected title by adverse possession, and hence, the suit was to be dismissed.

4. Necessary issues were framed by the trial Court, which tried the suit and dismissed the same. Aggrieved, the plaintiff took it on appeal, which also met the same fate at the hands of the first appellate Court. Hence, the plaintiff has brought forth this second appeal.

5. At the time of admission, the following substantial question of law was formulated by this Court:

"Whether the Courts below were right in the view they took that Sec.1 4(2) of the Hindu Succession Act, and not Sec.14(1) would apply in relation to the properties dealt with under the settlement deed Ex.A1?

6. This Court heard the learned Counsel for the appellant and also the learned Counsel for the respondents on those contentions.

7. Admittedly, the plaintiff is the daughter of the first defendant through his wife Thulasiammal. From the evidence, it would be clear that on 24.8.1949, the first defendant has executed the settlement deed in favour of Thulasiammal, settling the suit properties in her favour absolutely in lieu of maintenance, and that apart, after her life time, it should go to the male descendants of the settlor. The defendants 2 to 7 are the children of the first defendant through his second wife. The only point that arises for consideration before this Court is whether the life estate, granted in favour of the first wife Thulasiammal, the mother of the plaintiff, enlarged into an absolute one, in view of the provisions of law under Sec.14(1) of the Hindu Succession Act, or it was a limited one under Sec.14(2), since there was no pre-existing right over the same. Both the Courts below negatived the contention of the plaintiff's side stating that no question of enlargement of the life estate would arise, since there was no preexisting right for Thulasiammal in the properties; but, it was only a restricted estate in the

properties, and since it was one created therein, only Sec.14(2) of the Act would apply. A reading of the settlement deed under Ex.A1 would reveal that the properties were settled on the settlee namely Thulasiammal in lieu of maintenance. In the judgment of the Apex Court in V.TULASAMMA VS. V.SESHA REDDI (AIR 1944 SUPREME COURT 1944), which was followed by the Apex Court in C. MASILAMANI MUDALIAR AND OTHERS VS. SRI SWAMINATHASWAMI KOIL AND OTHERS (1996-2 L.W. 63), it has been held that in a case, where a female acquires a property under the compromise in lieu of satisfaction of her right of maintenance and the compromise pres cribed limited interest, still Sub-Section (1) to Sec.14 would apply and not Sub-Section (2) to Sec.14. In the instant case, a reading of Ex.A1 settlement deed would make it abundantly clear that the settlee Thulasiammal was given a life estate; but, it was in lieu of maintenance. Hence, this Court is of the opinion that it is a fit case, where the judgment of the Apex Court, referred to above, has got to be applied, and following the same, the findings of both the Courts below in that regard have got to be set aside.

8. It is highly doubtful whether the suit seeking for declaration and permanent injunction, would be maintainable. It is not in dispute that Thulasiammal died in the year 1984, and at the time the suit was filed, the settlor namely the husband of Thulasiammal, was well alive, and he has been added as the first defendant in the suit. It is not the case of the plaintiff that she has made any arrangement in respect of the properties in question, and thus, she died intestate. Needless to say that the first defendant was also an heir, who was entitled to succeed to the properties along with the other heirs by operation of law, and on the death of the first defendant, the other legal representatives have been added as defendants 2 to 7, who along with the plaintiff were also entitled to succeed to the properties. In such circumstances, the relief either as to the declaration that the suit property belonged to the plaintiff or as to the consequential permanent injunction cannot be granted. The Court is of the view that it is a fit case, where the plaintiff has got to be given liberty to work out her remedies by taking appropriate proceedings, if so advised. Accordingly, liberty is given. However, it is found that in view of the life estate given under the document, Thulasiammal became entitled to the entire properties, and after her death, by operation of law, the first defendant is entitled to the properties along with the other heirs.

9. With the above observation, this second appeal is dismissed leaving the parties to bear their costs.

Index: Yes
Internet: yes

To:
1. The Subordinate Judge
Vellore
2. The Principal District Munsif
Vellore
3. The Record Keeper
V.R. Section
High Court, Madras.

nsv/

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